

**IN THE COURT OF APPEALS OF IOWA**

No. 0-101 / 09-1832  
Filed March 10, 2010

**IN THE INTEREST OF L.W. and I.W.,  
Minor Children,**

**V.G., Mother,**  
Appellant.

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Appeal from the Iowa District Court for Lee (North) County, Gary R. Noneman, District Associate Judge.

A mother appeals from the order terminating her parental rights.  
**AFFIRMED.**

Artemio Santiago, Fort Madison, for appellant mother.

Curtis Dial, Keokuk, for father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Michael Short, County Attorney, and David Andrusyk, Assistant County Attorney, for appellee State.

David Sallen, Fort Madison, for minor children.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

**DOYLE, J.**

A mother appeals from the order terminating her parental rights. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings.***

V.G. is the mother and T.W. is the father of L.W., born in March 2004, and I.W., born in May 2006.<sup>1</sup> L.W. has been diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. I.W. has been diagnosed with disruptive behavior disorder NOS. The parents are not married and have lived together off and on.

L.W. came to the attention of the Iowa Department of Human Services (Department) in 2004 when it was reported L.W. was crawling in dog feces and that the only heat in the family's home was provided by a space heater in one room. This report was determined to be founded. In June 2005, it was reported that the home where the mother and L.W. were then living had limited electricity and broken glass, old trash, cigarette butts and ashes, and dog feces within L.W.'s reach. It was also reported that L.W. was covered with bug and fleabites. The Department determined L.W. was at risk due to inadequate shelter and care, and the parents signed an application for voluntary services.

In October 2005, the State filed a petition asserting L.W. to be a child in need of assistance (CINA) due to deteriorating conditions in the home. The parents did not contest the CINA petition, and L.W. was adjudicated to be a CINA. The court ordered that the parents maintain a clean home for L.W., participate in family centered services to include parent skill and therapy, provide

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<sup>1</sup> The father has not appealed from the termination of his parental rights.

random samples for urinalysis testing, complete a mental health evaluation and recommended treatment, and complete a children in the middle class prior to the next scheduled court hearing. L.W. was to remain in the parents' care.

Following adjudication, the parents received a variety of services designed to correct the conditions leading to the CINA adjudication. The parents' home was randomly spot checked, and issues with the home's cleanliness and safety of the children persisted. I.W. was born in May 2006, and safety concerns continued in the parents' home.

The parents split up in 2007, and the children initially lived with the father. The mother received visitation on the weekends. The mother's home continued to have cleanliness and safety issues.

Review hearings were held approximately every six months. In June 2007, the parents entered into a consent agreement, agreeing to the court's previous orders that found L.W. to be a CINA and setting the matter for another review hearing in six months. The court's order accepting the agreement found that reasonable efforts were being made and notified the parties that if they requested additional or other services, they were directed to immediately notify the Department.

Another review hearing was held in December 2007. The court again ordered that the mother complete a mental health evaluation and recommended treatment, maintain a clean home, and participate in services with the service provider, Mid Iowa. The children remained in the father's care with visitation with the mother.

After an incident with the father, the children were placed in foster care in January 2008. A review hearing was held concerning L.W. in February 2008. The court found L.W. could not be returned to her parents' care due to both parents' lack of independent residences and lack of cooperation in prior ordered court objectives, among other reasons. The court found reasonable efforts had been made but were unsuccessful. L.W. was placed in foster care, and visitation between L.W. and the parents was ordered. Following another hearing, I.W. was adjudicated CINA and placed in foster care.

The mother continued to reside with others and moved several times. The mother struggled to consistently attend the visits and maintain a clean and safe home. Services continued to be offered to the parents.

Another review hearing concerning both children was held in April 2008. The court again found that the children could not be safely returned to the parents' care, due to the parents' inability to safely parent the children, lack of independent residence, and lack of cooperation in court-ordered objectives. The children's placement in foster care was continued, and visitation was ordered. The court also ordered that the mother participate with all services deemed appropriate by the Department, including maintaining an independent residence and completing the Incredible Years program.

A review hearing was held in October 2008. At that time, the mother did not have individual housing, she had not completed her mental health evaluation ordered in October of 2005, and she had not participated in the Incredible Years program. The court continued the children's placement in foster care and reordered the mother to comply with the court's previous orders.

A permanency hearing was held in January 2009. Following hearing, the court found that termination of the parent-child relationship would not be in the best interests of the children because the parties stipulated and agreed to continue placement of the children for an additional six months due to the parents' progress. The court found reasonable efforts had been made, including parent skill; family safety; risk; and permanency services; mental health evaluations; transportation; random spot checks; legal representation; court supervision; and case management by the Department. The children's placement in foster care was continued and visitation ordered.

In April 2009, the mother moved from Iowa to Missouri. As a result, the service provider refused to provide transportation across state lines despite the mother's request. Due to living out of state and having no transportation, the mother missed some visits with the children. She moved back to Iowa at the end of June 2009.

A permanency review hearing was also held in April 2009. The court again found that termination of the parent-child relationship would not be in the best interests of the children. The parties stipulated and agreed to continue placement of the children for an additional three months in order to allow the parents to progress. The children's placement in foster care was continued and visitation ordered.

The final permanency hearing was held in June 2009. The court found the services provided had been unsuccessful and that the children could not be returned to the parents' care. The court directed the State to file petitions for termination of the parents' parental rights.

On July 30, 2009, the State filed its petitions to terminate the parents' parental rights. The juvenile court held a contested termination hearing in October 2009. At the hearing, the Department's social worker testified that the mother had failed to gain independent housing and to complete the parenting class required by the court. The worker further testified that the Department made every reasonable effort to attempt to return the children to the parents' care, but the services had not alleviated the problems that led to the children's removal. The worker testified that the children could not be safely returned to the parents' care at the time of the hearing. The worker testified that the children were bonded with the foster parents and that the foster parents wished to adopt the children.

The mother testified she had started the parenting class three times but never finished it. The mother conceded that she had problems being consistent in her visitation prior to June of 2009, but testified she had been more consistent since that time. She testified the two-bedroom apartment she was living in with two other adults and one child was adequate for the children to be returned to her care.

In an order filed November 24, 2009, the juvenile court terminated the mother's parental rights to L.W. pursuant to Iowa Code section 232.116(1)(f) (2009) (child four or older, child CINA, removed from home for twelve of last eighteen months, and child cannot be returned home), and to I.W. pursuant to section 232.116(1)(h) (child is three or younger, child CINA, removed from home for six of last twelve months, and child cannot be returned home).

The mother now appeals.

## ***II. Scope and Standards of Review.***

We review termination of parental rights de novo. *In re Z.H.*, 740 N.W.2d 648, 650-51 (Iowa Ct. App. 2007). Grounds for termination under section 232.116(1) must be proved by clear and convincing evidence. *In re P.L.*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). If a ground exists, the court may terminate a parent's parental rights. *P.L.*, \_\_\_ N.W.2d at \_\_\_. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *Id.* at \_\_\_; Iowa Code § 232.116(2). We also consider whether any of the exceptions contained in section 232.116(3) allow the court not to terminate. *Id.* at \_\_\_; Iowa Code § 232.116(3).

## ***III. Discussion.***

### ***A. Reasonable Services.***

The mother argues the State failed to provide her with reasonable services intended to facilitate reunification with the children. Specifically, she contends she should have been provided services in Missouri and/or been provided with transportation to Iowa for her visitation. "While the State has the obligation to provide reasonable reunification services, the [parent] ha[s] the obligation to demand other, different, or additional services prior to the termination hearing." *In re S.R.*, 600 N.W.2d 63, 65 (Iowa Ct. App. 1999). When a parent alleging inadequate services fails to demand services other than those provided, the issue of whether services were adequate is not preserved for appellate review. *Id.*; *In re T.J.O.*, 527 N.W.2d 417, 420 (Iowa Ct. App. 1994).

Here, the Department's worker testified that the mother had asked for services and transportation after the mother moved to Missouri. However, the record does not show that the mother requested such services from the court.

Nevertheless, even if we were to assume, *arguendo*, that the mother preserved error on this issue, we would find her claim to be meritless. We initially note that while visitation is "an important ingredient to the goal of reunification," it is "only one element in what is often a comprehensive, independent approach to reunification." *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996). In evaluating the reasonableness of the State's efforts towards reunification, our focus is on the services provided by the State and the parent's response to those services, not on the services the parent now claims DHS failed to provide. *In re C.B.*, 611 N.W.2d 489, 494 (Iowa 2000).

This case, at least concerning L.W., has been pending since 2005. Since that time, the State has offered the mother a wide array of services, including a mental health evaluation and treatment, parenting skill classes, and visitation, to reunite the mother with the children. However, the record shows the mother was inconsistent in her visits with the children and services throughout the case. Although the mother focuses on her time living in Missouri, the mother did not move to Missouri until 2009, and she only lived there three months. To her credit, the mother, while living in Missouri, was able to make all of her visits with the children during one of those months despite being in another state. Upon our *de novo* review of the record, we conclude the State's efforts towards reunification throughout the juvenile court proceedings were reasonable. See *In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) ("The services required to be



supplied an incarcerated parent, as with any other parent, are only those that are reasonable under the circumstances.”).

***B. Grounds for Termination.***

The mother contends the State did not meet its burden in proving by clear and convincing evidence that the children could not be returned to the mother’s custody as of the date of the termination hearing.<sup>2</sup> We disagree.

The legislature incorporated a twelve-month limitation for children in need of assistance aged four or older, see Iowa Code § 232.116(1)(f)(3), and a six-month limitation for children in need of assistance aged three or younger. See *id.* § 232.116(1)(h)(3). Our supreme court has stated that “the legislature, in cases meeting the conditions of [the Iowa Code], has made a categorical determination that the needs of a child are promoted by termination of parental rights.” *In re M.W.*, 458 N.W.2d 847, 850 (Iowa 1990) (discussing Iowa Code § 232.116(1)(e)). The public policy of the State having been legislatively set, we are obligated to heed the statutory time periods for reunification.

Here, L.W. first came to the Department’s attention in 2004. Services were offered for years, and the children were placed in foster care in January 2008. In January 2009, the juvenile court granted the parents an additional six months to establish they could safely parent the children, yet the mother did very

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<sup>2</sup> The juvenile court determined that termination was appropriate under sections 232.116(1)(f) (for L.W.) and (h) (for I.W.). Under both sections, termination is proper if the child cannot be returned to the custody of the child’s parents as provided in section 232.102 at the present time. See Iowa Code §§ 232.116(1)(f)(4) & 232.116(1)(h)(4). The mother does not dispute that subsections (1), (2), and (3) of sections 232.116(1)(f) and 232.116(1)(h) have been met.

little to regain custody. In terminating the mother's parental rights the court found:

[The mother's] situation continues to be unstable. She has another child in her care, [an eighteen] month old . . . . She lacks independent housing and lives [with her eighteen year old paramour's mother]. . . . Except for a part-time newspaper delivery job, the family is largely depending on [the Family Investment Program] and Social Security Disability payments for household resources. . . . Other than the paper route, [the mother] has no job, has not completed high school, and lacks any significant employment skills. Her history of cooperation with services has been limited, intermittent, and largely unsuccessful when measured against the goal of becoming an adequate and stable parent. In reality, though she demonstrates subjective affection for her children, she has never really parented them effectively at all over nearly their entire lives. [The mother] remains herself unstable, dependent, and inadequately equipped to provide for her own needs, let alone those of small children. She has not followed through on recommendations and has not complied with the court's CINA orders. A recently completed home study of the . . . home where [the mother] resides has been denied as a placement for [the children]. . . . [The mother's] poor parenting history, lack of independent housing and resources for taking care of herself (let alone two more children), and serious deficiencies in her current living situation makes placement of the children with her not possible or appropriate. Placement of the children with their natural mother would be contrary to their welfare.

We concur in all of the juvenile court's findings. The mother has been given more than adequate time to address the safety hazards posed in her home and to fully participate in services, and the mother's lack of progress raises serious concerns about her ability to meet the needs of her children in the future. A parent's past performance may be predictive of the quality of the future care that parent is capable of providing. *C.B.*, 611 N.W.2d at 495. Although the mother had been more consistent in visitation toward the time of the termination, "[a] parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired, to begin to express an interest in parenting." *Id.*

“When the statutory time standards found in section 232.116 are approaching, and a parent has made only minimal progress, the child deserves to have the time standards followed by having termination of parental rights promptly pursued.” *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). “At some point, the rights and needs of the child rise above the rights and needs of the parents.” *Id.* We find clear and convincing evidence that the children could not be safely returned to the mother’s care at the time of the termination hearing. Accordingly, we affirm the juvenile court’s decision to terminate the mother’s parental rights.

#### ***IV. Conclusion.***

Because we conclude the State’s efforts towards reunification throughout the juvenile court proceedings were reasonable and we find clear and convincing evidence that the children could not be safely returned to the mother’s care at the time of the termination hearing, we affirm the juvenile court’s decision to terminate the mother’s parental rights.

**AFFIRMED.**